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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,926	03/12/2001	Salvatore Melis	Q63447	7232

7590 11/04/2005

SUGHRUE, MION, ZINN
MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3202

EXAMINER

BURCH, MELODY M

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/802,926	Applicant(s) MELIS, SALVATORE	
	Examiner Melody M. Burch	Art Unit 3683	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 19 October 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see number 11. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 19 and 21-23.

Claim(s) rejected: 14-18, 20 and 24.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☒ Other: See Continuation Sheet.

Continuation of 11. does NOT place the application in condition for allowance because: the arguments are not persuasive.

Applicant argues that the unit of DE'492 is not arranged for servo-assisted operation because it does not operate the gear box in order to execute the commands imparted by the user through a gear shift lever. Examiner disagrees and notes that the gear box in DE'492 is controlled based on movement imparted by the user via the pedal shown to the left of element 614 in figure 6 of DE'492. Actuation of the pedal results in a signal produced by element 614 which represents a command imparted by the user. This signal is transmitted to the gear box via intervening elements including control unit 620. Since actuation of the pedal effects operation of the gear box by way of an electronic control unit, the unit of DE'492 is, indeed, arranged for servo-assisted operation.

Applicant also argues that the "remote manual gear shift means" of DE'492 is not manual. Examiner disagrees and notes that a device that is actuated by an operator's foot is considered to be manual as opposed to being an automated means.

With regards to the argument with respect to the predetermined positions of the manual gear shift means, Examiner notes that the amendment including such limitation raises a new issue that requires further consideration.

Finally, with regards to the limitation of engaging the gear ratio of the gear box corresponding to the instantaneous position of the remote manual gear shift means, Examiner notes that the claim language recites that "the electronic control unit...is operatively interposed between the actuator means and the sensor means and is arranged" to bring about "the engagement of the selected gear ratio of the gearbox corresponding to the instantaneous position of the remote manual gearshift means." Examiner notes that the claim language simply requires that the ECU be arranged to enable such a function. Examiner maintains that the control unit 620 is operatively interposed between the actuator means 606 and the sensor means 614 and is arranged to bring about the engagement of the selected gear ratio of the gearbox corresponding to the instantaneous position of the remote manual gearshift means by virtue of the control unit having the manual gearshift means sensor signal as an input and having the ECU output being transmitted to an actuator that is operatively connected to the gearbox. Accordingly, the rejections have been maintained.

Again, the issue of the predetermined positions raises a new issue that requires further consideration and/or search.

Continuation of 13. Other: Examiner also notes that "sensor means" is claimed but is not shown. The last paragraph of pg. 9 states that there is a sensor unit that contains sensor means within, but that the sensor means within are not shown.

Melody M. Burch
10 11/1/05